

Michael A. Zapf, DPM, President

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement
of Surrendered Certificate of:

PARVIZ SERVATJOO,

Petitioner.

Case No. 500-2017-000593

OAH Case No. 2018030897

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on July 5, 2018, in Los Angeles, California.

David M. Chodos, Attorney at Law, appeared on behalf of petitioner Parviz Servatjoo, who was present. Beneth A. Browne, Deputy Attorney General, appeared under Government Code section 11522.

Oral and documentary evidence was received. The record was held open to allow the Deputy Attorney General to file additional documents by July 6, 2018, and to allow petitioner to respond by July 18, 2018. Neither the Deputy Attorney General nor petitioner filed additional documents.

The record was closed and the matter was submitted for decision on July 18, 2018.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Board of Podiatric Medicine (Board) issued a License of Doctor of Podiatric Medicine, Number E-3494, to petitioner on December 28, 1987. The Board issued petitioner a Cease Practice Order on April 28, 2015, and filed a Petition to Revoke Probation that it had imposed on petitioner's license approximately three months earlier, for violation of the terms of probation. On March 9, 2016, petitioner surrendered his license, which expired on August 31, 2015.

2. Petitioner filed a Petition for Penalty Relief, Reinstatement of Suspended Certificate, on September 5, 2017 (Petition).

Petitioner's Disciplinary History

3. On March 18, 1999, the Board's executive officer filed an Accusation against petitioner in Case Number 1B-1996-61489, alleging gross negligence, repeated negligent acts, incompetence, failure to maintain adequate records, and unprofessional conduct in connection with the care of two patients. In a Decision and Order, effective January 17, 2002, adopting a Stipulated Settlement and Disciplinary Order signed by petitioner on August 6, 2001, the Board suspended petitioner's doctor of podiatric medicine license, stayed the suspension, and placed petitioner's license on probation for three years under terms and conditions.

4. On August 22, 2003, petitioner filed a Petition for Penalty Relief, praying for termination of probation. In a Decision and Order effective April 15, 2004, the Board adopted a proposed decision of an administrative law judge, granting the petition and terminating probation. The Board found that petitioner readily acknowledged "his errant acts," was "laudably affected by the Board's discipline," and practiced safely while on probation. (Ex. 9.)

5. On May 22, 2008, the Board's executive officer filed an Accusation against petitioner in Case Number 1B-2007-181509, alleging that petitioner practiced without a valid license, in that he practiced podiatric medicine while his license was delinquent for nonpayment of fees, and that his ability to practice was impaired due to mental illness affecting competency, based on a psychiatric examination finding that he was incapacitated by depressive disorder and was unable to safely practice podiatric medicine.

6. In a Decision and Order in Case Number 1B-2007-181509, effective May 8, 2009 (2009 Order), the Board adopted a Stipulated Settlement and Disciplinary Order signed by petitioner on March 6, 2009, in which petitioner stipulated that he had practiced without a license and that his license was subject to discipline; he did not stipulate as to mental illness. The Board revoked petitioner's doctor of podiatric medicine license, stayed the revocation, and placed petitioner's license on probation for five years under terms and conditions including that he receive a medical evaluation, and undergo psychotherapy treatment. Probation was scheduled to terminate in May 2014.

7. On March 5, 2014, the Board's executive officer filed a First Amended Accusation and Petition to Revoke Probation against petitioner in Case Number D1-2007-181509, thereby tolling petitioner's prior probationary term with 63 days of probation remaining. The First Amended Accusation and Petition to Revoke Probation alleged gross negligence with respect to several patients, repeated negligent acts, lack of physical and mental fitness to practice medicine, and failure to maintain adequate and accurate records, all of which constituted cause to revoke probation.

8. In a Decision and Order effective January 15, 2015, the Board adopted a Stipulated Settlement and Disciplinary Order signed by petitioner on October 30, 2014. Petitioner stipulated, among other things, that complainant could establish a prima facie case of the charges and allegations in the First Amended Accusation and Petition to Revoke Probation if the matter went to hearing, that he gave up his right to contest the charges, and that if he were ever to petition to modify or terminate probation, all the allegations and facts set forth in the First Amended Accusation and Petition to Revoke Probation “shall be deemed true, correct and fully admitted” (Ex. 14.) The Board revoked petitioner’s license, stayed the revocation, and placed petitioner’s license on probation for an additional six years following the expiration of the remaining 63 days of his then-current probationary period. The Board also suspended respondent for 30 days and imposed terms and conditions including that he not prescribe certain controlled substances, abstain from use of controlled substances without a prescription, undergo biological fluid testing, undergo a psychiatric evaluation, undergo psychotherapy treatment, and undergo a medical evaluation and treatment.

9. On April 28, 2015, the Board’s executive officer issued a Cease Practice Order, finding that petitioner “has failed to obey Probationary Condition No. 5 [biological fluid testing for controlled substances] . . . by testing positive on a sample test.” (Ex. 13.) Evidence in the record reflects that the controlled substance was cocaine.

10. On April 30, 2015, the Board’s executive officer filed a Petition to Revoke Probation against petitioner in Case Number 500-2015-000178, alleging that petitioner had failed to abstain from the use of controlled substances in violation of the terms of his probation in Case Number D1-2007-181509 (1B-2010-207359). Specifically, the petition included allegations that on February 21, March 2, March 14, and April 1, 2015, petitioner provided urine specimens for biological fluid testing as required by the conditions of his probation, and that the specimens tested positive for cocaine, a controlled substance.

11. In a Decision and Order effective March 9, 2016 (2016 Order), the Board adopted a Stipulated Surrender of License and Order signed by petitioner on January 25, 2016. Petitioner stipulated that he “admits the truth of each and every charge and allegation in Petition to Revoke Probation No. 500-2015-000178, agrees that cause exists for discipline and hereby surrenders his Podiatrist License No. E 3494 for the Board’s formal acceptance.” (Ex. 15, p. 4.) The 2016 Order provides that the license “is surrendered due to a physical illness.” (Ex. 15, p. 5.) The 2016 Order further provides that, if petitioner ever files a petition for reinstatement, “all of the charges and allegations contained in Petition to Revoke Probation No. 500-2015-000178 shall be deemed to be true, correct and admitted by [petitioner] when the Board determines whether to grant or deny the petition.” (Ex. 15, p. 5.)

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Mitigation and Rehabilitation

12. Petitioner obtained a Doctor of Podiatric Medicine degree from the California College of Podiatric Medicine in 1985. He served a one-year preceptorship in podiatry medicine, followed by a one-year surgical residency at Stanford University Medical Center. He was certified by the American Board of Podiatric Surgery in 1994, and re-certified from 2004 to 2014. He was also certified by the American Board of Podiatric Orthopedics in 1992, and was made a fellow of the American College of Foot and Ankle Surgeons in 1994. Petitioner was the founder and director of the College Hospital podiatric surgical/medical residency from 1994 to 1999, and chairman of the podiatry department at Midway Hospital Medical Center from 1990 to 2004. He has been in private practice since 1988.

13. A written statement accompanying his petition, which petitioner signed on July 15, 2017, and adopted in his testimony at hearing, recited that he was seriously injured in a 2006 automobile accident, resulting in severe pain and depression. He was prescribed OxyContin, later replaced by Oxycodone, and Norco for pain, and Lexapro for depression. His depression grew worse, and he broke down in tears at a February 2007 meeting with his Board probation monitor; in June 2007, petitioner agreed to see a psychiatrist, Lester Zacker, M.D.

a. Dr. Zacker examined petitioner and diagnosed him with incapacitating severe depression and somatoform disorder. Petitioner received psychiatric treatment; over the subsequent two years, he was able to control his pain with the prescription medications and he began practicing again. But the ongoing treatment with opioids negatively affected petitioner, who became increasingly depressed. "In my desperation, I reached such a low point that I turned to taking both prescribed and un-prescribed medication, as well as using illegal substances in order to relieve the severe pain, exhaustion, and the depression that had become an ongoing part of my life." (Ex. 1, tab 2, p. 2.) "It became obvious that the prescribed medication that I had been taking were [sic] leading to a dependency that was much worse than the problems that the medications were supposed to treat and alleviate. . . . I had hit bottom." (*Ibid.*)

b. Petitioner's depression is now being treated by Maurice Zagha, M.D., a family medicine physician who had referred podiatry patients to petitioner. Dr. Zagha prescribes Clonazepam, which allows petitioner to function. Petitioner wrote that, "Moving forward in full recognition of the implications of the dependency I suffered, I now attend Narcotics Anonymous meetings as a way of avoiding a relapse. . . . After enduring numerous obstacles over the past few years, I am now well enough to resume serving the public as a podiatrist." (*Ibid.*)

c. Petitioner, who acknowledged that he is "a recovered addict," testified that he stopped participating in Narcotics Anonymous in April or May 2017 because he found the meetings depressing, and was tempted to join other attendees who would step outside the meetings and take drugs. This testimony is inconsistent with the July 15, 2017, written

statement, in which petitioner wrote that he was presently attending Narcotics Anonymous meetings.

d. Petitioner testified he lost his concentration, his house, and his life, and he was in denial and was ashamed to face the truth. He now takes only medications prescribed by his physician, as well as Advil or Aleve for headaches.

e. Though he had surrendered his license, petitioner continued with the PACE program that had been a condition of his probation, completing the physician prescribing, professional boundary, and record keeping courses. He did not, however, see a psychologist, as required under his probation, because he could not afford to pay the required \$3,000 advance fee. Petitioner is not currently undergoing blood or urine testing.

14. Unable to afford a residential treatment program, petitioner sought the help of Dr. Zagha, who gradually reduced petitioner's Oxycodone dosage, replaced it with Methadone, then weaned petitioner off Methadone, a process that petitioner described as "hellishly painful." (Ex. 1, tab 2, p. 3.)

a. Dr. Zagha testified at hearing that, though petitioner is no longer taking opioids, he has a very painful knee condition that is worsening and will require treatment with pain medication and, Dr. Zagha believes, knee replacement surgery. Dr. Zagha has, so far, prescribed only anti-inflammatories, but characterized the effectiveness of that treatment as "like peeing in the ocean." Petitioner has Medi-Cal coverage, but Dr. Zagha testified that it is difficult to find a surgeon who treats Medi-Cal patients whom he would trust to perform the knee surgery, and the county hospital has a long waiting list. If petitioner's license is reinstated and he goes back to work, he may be able to afford health insurance and have the knee surgery.

b. Dr. Zagha allowed petitioner to see patients in his office space before petitioner surrendered his license in March 2016. He described petitioner as an "emotional wreck" after he lost his house, filed for bankruptcy, and entered divorce proceedings; petitioner was sleeping at a friend's house and was destitute. Dr. Zagha gave petitioner money for food, and paid him to perform electrical stimulation testing on some diabetic neuropathy patients once petitioner was certified to do so; Dr. Zagha found petitioner's work to be excellent. He considers petitioner to be a gifted and talented podiatrist.

c. In a Decision and Order effective April 7, 2016, in Case Number 06-2012-228084, the Medical Board of California adopted a Stipulated Settlement and Disciplinary Order, under which Dr. Zagha's physician's and surgeon's certificate was revoked, the revocation was stayed, and Dr. Zagha's certificate was placed on three years' probation on terms and conditions including that he maintain a record of all controlled substances ordered, prescribed, dispensed, and administered, take a prescribing practices course, and use a practice monitor. The underlying Accusation alleged gross negligence, incompetence, excessive treatment or prescribing, failing to make a record of a prescriptions for controlled substances,

prescribing without appropriate examination, and failure to maintain adequate and accurate medical records. Dr. Zaghera believes he is in compliance with the terms of his probation.

15. After surrendering his license, petitioner became certified to perform nerve conduction studies, which for a time was, he wrote, his sole source of income. He now receives monthly payments of \$3,825 from his sister, who purchased his house; he uses that money to provide for himself and to help support his 17-year-old twin sons. If his license is reinstated, petitioner intends to reopen a private practice. He believes that, if his license is reinstated, he should not be placed on probation.

16. The 2016 Order requires petitioner to pay the Board \$50,000 in costs and investigative fees as a condition precedent to reinstatement of his license. Petitioner wrote: "I am now unemployed and destitute. If paying \$50,000, or indeed any substantial amount were a condition of my licence [sic] being reinstated, I fear that I would never be able to resume the practice of my profession." (Ex. 1, tab 2, p. 4.) He testified that he is "worse than destitute."

17. Petitioner testified that his practicing without a license, the subject of the 2009 Order, was due to his funds being embezzled by his accountant, who was criminally convicted.

18. On May 20, 2017, petitioner submitted to a psychiatric evaluation by Bruce Gainsley, M.D. Petitioner told Dr. Gainsley he intended to ask the Board to reinstate his license and wanted Dr. Gainsley to determine whether he posed any danger. As of the time of the examination, petitioner was taking OxyContin and Norco, as well as Clonazepam and Aleve.

a. Dr. Gainsley wrote in his report, "He tells me he has been attending Narcotics Anonymous meetings since January 2017 'voluntarily'—but seemed confused when I asked him if he was 'working the steps.'" (Ex. 1, tab 3, p. 1.)

b. Petitioner told Dr. Gainsley that he had received income performing nerve conduction studies, but was living on financial assistance from his brothers.

c. After performing a document review and conducting an 80-minute interview, Dr. Gainsley diagnosed petitioner with "Bipolar II Disorder, most recent, Hypomania," and with "Stimulant Use Disorder, mild, cocaine."

d. Dr. Gainsley noted that petitioner presented "with an intense, hypomanic demeanor," and "a "grandiose self-concept"; that he was inconsistent in his history, that his "body language evokes skepticism when offering some explanations of his disciplinary history." (Ex. 1, tab 3, p. 3.) Petitioner's "clinical presentation and history of disciplinary actions are concerning. *It is not difficult to extrapolate this into a future characterized by events that will come to the attention of the board.*" (*Ibid*, italics added.) Despite this, Dr. Gainsley found "no clear, tangible elements . . . that, at this time, would justify his not being granted a restoration of his license" (*Ibid*.)

19. Petitioner presented character reference letters from Ilan Bazak, D.P.M., Maurice Zagha, M.D., Shahram Rabbani, D.P.M., and Gary Millard, M.D., all urging that the Board reinstate petitioner's license. (Exs. 6-9.)

a. Dr. Bazak, a colleague of petitioner's for 25 years, wrote that petitioner is "a brilliant physician with unparalleled knowledge in his scope of practice." (Ex. 6.) Petitioner discussed with Dr. Bazak the PACE courses he was taking to rehabilitate himself. Petitioner has a reputation as a selfless, committed physician who acts in the best interest of his patients.

b. Dr. Zagha wrote that he has referred patients to petitioner for podiatric care, and that his skills and his compassion for patients are exemplary.

c. Dr. Rabbani wrote that he has known petitioner for 15 years, and that petitioner has a caring attitude and good knowledge of podiatry, patients like and trust him, and he is dedicated to the profession and exceptionally talented.

d. Dr. Millard leads weekly Narcotics Anonymous meetings that petitioner had been attending weekly for three months as of May 31, 2017, when Dr. Millard wrote the letter. Petitioner attended voluntarily, without a court or Board order. Petitioner was open about how he had become dependent on medications, the effects of dependency on his life, and the difficult process of detoxification.

20. Petitioner has not offered evidence sufficient to warrant granting his petition. He has failed to demonstrate that he is adequately rehabilitated and that he would not pose a threat to public safety should her certificate be reinstated. Taking PACE courses, voluntarily attending Narcotics Anonymous meetings for three months, and staying clean since 2015 are laudable and relevant to establishing rehabilitation, but they are insufficient.

21. Petitioner continues to provide inconsistent accounts of his history, including how long he participated in Narcotics Anonymous. He stopped attending meetings in part because he found himself tempted to use drugs illegally. He obtained a psychiatric evaluation that provides a highly questionable recommendation for reinstatement in view of the psychiatrist's diagnoses and explicit finding that petitioner will likely engage again in activities requiring Board discipline. Petitioner's treating physician describes a knee condition that will have to be treated with something stronger than anti-inflammatory drugs, and there is no plan for how petitioner will safely use stronger medications. Petitioner stipulated to conditions that he must satisfy before license reinstatement, but he cannot afford to do so. Yet he insists that his license should be reinstated without any probationary conditions. This reflects poorly on his professional judgment, in view of his medical and disciplinary history, and poses a risk to public health, safety, and welfare. The public should not bear that risk. The Board's duty to protect the public requires that the Petition be denied.

LEGAL CONCLUSIONS

1. The Board is the state agency responsible for licensing, regulating, and disciplining practitioners of podiatric medicine. (Bus. & Prof. Code, §§ 2460.1, 2479, 2486.) The Board's highest priority is protection of the public. (Bus. & Prof. Code, § 2460.1.)

2. The Board may deny an application for licensure, or may discipline a license, for any of the causes set forth in Article 12, section 2220 et seq., of the Medical Practice Act. (Bus. & Prof. Code, § 2497.) A person whose certificate has been revoked may petition the Board for reinstatement. "The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons certificated in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed." (Bus. & Prof. Code, § 2307, subd. (c).)

3. Proceedings regarding license discipline shall be held in accordance with the Administrative Procedure Act, commencing with Government Code section 11500. (Bus. & Prof. Code, §§ 2497, subd. (b), & 2230, subd. (a).) The administrative law judge hearing the petition "may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).) The administrative law judge may recommend reinstating a certificate and imposing probationary terms and conditions. (Bus. & Prof. Code, § 2307, subd. (f).)

4. In a proceeding to reinstate a revoked certificate, the burden rests on the petitioner to prove rehabilitation and entitlement to a restored certificate. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The petitioner must present proof of rehabilitation strong enough to overcome the Board's former adverse determination. (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Id.*; *Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308.) Petitioner has not sustained his burden of proof.

5. Cause does not exist under Business and Professions Code section 2307 to grant petitioner's request for reinstatement of his certificate, based on Factual Findings 3 through 21.

6. In considering license disciplinary action or relief from such action, an administrative law judge "shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence." (Bus. & Prof. Code, § 2229, subd. (b).) "Where rehabilitation and protection are inconsistent, protection shall be paramount." (Bus. & Prof. Code, § 2229, subd. (c).)

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7. Petitioner has not convincingly demonstrated rehabilitation, as set forth in Factual Findings 12 through 21. His medical and psychological conditions, his inability to satisfy the conditions of his prior probation, and his failure to recognize the need for further monitoring, would continue to pose a threat to the public if the Board were to reinstate his license, even on restrictive probationary terms.

ORDER

The petition of Parviz Servatjoo for reinstatement of Doctor of Podiatric Medicine License Number E-3494 is denied.

DATED: August 16, 2018

DocuSigned by:

Howard W. Cohen

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings